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14 CITY AND COUNTY OF SAN FRANCISCO

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SELINA KEENE, MELODY FOUNTILA,
18 MARK MCCLURE,

19 Plaintiffs,

20 vs.

21 CITY and COUNTY OF SAN FRANCISCO

22 Defendant.

23 Case No. 4:22-cv-01587-JSW

24 **ADMINISTRATIVE MOTION TO CONSIDER
25 WHETHER CASES SHOULD BE RELATED**

26 **(Civil L.R. 3-12(b) and 7-11)**

27 Judge: Hon. Jeffrey S. White

28 Trial Date: None set.

INTRODUCTION

The City and County of San Francisco (the “City”) respectfully asks the Court to consider whether the above-captioned action (the “*Keene* Action”) is related to a later filed action: *Royce v. City and County of San Francisco*, N.D. Cal. Case No. 3:23-cv-03643-TSH (the “*Royce* Action”).

The Court previously related nine other actions to the *Keene* Action: *Gozum v. City and County of San Francisco*, No. 4:22-cv-03975-JSW (the “*Gozum* Action”); *Guardado, et al. v. City and County of San Francisco*, No. 4:22-cv-04319-JSW (the “*Guardado* Action”); *Shaheed, et al. v. City and County of San Francisco*, No. 4:22-cv-06013-JSW (the “*Shaheed* Action”); *Debrunner, et al. v. City and County of San Francisco, et al. (Debrunner Action)*, No. 4:22-cv-07455-JSW; *Cook v. City and County of San Francisco*, No. 4:22-cv-07645-JSW (the “*Cook* Action”); *Sanders v. San Francisco Public Library*, No. 4:23-cv-00211-JSW (the “*Sanders* Action”); *Monegas v. City and County of San Francisco Department of Public Health*, No. 4:22-cv-04633-JSW (the “*Monegas* Action”); *Rodriguez v. City and County of San Francisco*, No. 4:23-cv-03139-JSW (the “*Rodriguez* Action”); *Yancey v. City and County of San Francisco*, No. 4:23-cv-09045-JSW (the “*Yancey* Action”) (collectively “Related Vaccine Actions”). The recently filed *Royce* Action bears a substantially similar relationship to *Keene* as the Related Vaccine Actions and likewise should be related.

The *Royce* Action was brought by a former City employee who alleges he was terminated for failure to comply with the City’s COVID-19 vaccination policy. *See* Declaration of Lauren E. Wood (“Wood Decl.”) Ex. 1 (Royce Complaint). Like the plaintiffs in the *Keene* Action and many of the other Related Vaccine Actions — including *Cook*, *Debrunner*, *Gozum*, *Guardado*, and *Shaheed*, — Royce asserts claims under the California Fair Employment and Housing Act (“FEHA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”) based on the City’s alleged failure to grant a religious exemption from the City’s vaccination policy. Wood Decl. Ex. 1.

On May 12, 2023, the City filed a motion to consolidate the *Keene* Action and the first seven Related Vaccine Actions.¹ Wood Decl. ¶ 4. On July 12, 2023, the Court granted the City’s motion to

¹ The *Rodriguez* Action was not yet pending in this District at the time the motion to consolidate was filed. The *Yancey* Action had been filed but not served, and the City was unaware that it was pending at the time the motion was filed. Wood Decl. ¶ 5.

1 consolidate and ordered that all Related Vaccine Actions shall be consolidated up to and including the
2 Court's ruling on summary judgment motions, including for discovery and all motions ("Limited
3 Consolidation Order" Dkt. 90). Wood Decl. ¶ 5, Ex. 2. The Court also found that "any subsequent case
4 filed in the District that is determined to be related to the Related Vaccine Cases shall be subject to this
5 Limited Consolidation Order." *Id.* at p. 3, lines 26-28.

DISCUSSION

8 Cases are related if:

- 9 (1) The actions concern substantially the same parties, property, transaction, or
event; and
- 10 (2) It appears likely that there will be an unduly burdensome duplication of
labor and expense or conflicting results if the cases are conducted before
11 different Judges.

12 N.D. Cal. Local Civil Rule 3-12(a). Whenever a party believes an action filed in this district may be
13 "related to an action which is or was pending in this District ..., the party must promptly file in the
14 lowest-numbered case an Administrative Motion to Consider Whether Cases Should be Related." *Id.*
15 Rule 3-12(b).

16 Here, the *Royce* Action concerns substantially the same parties as the *Keene* Action and the
17 Related Vaccine Actions, as the City, its constituent departments, and/or City employees are parties in
18 to each of the actions.

19 The plaintiffs in *Keene* and *Royce* and the other Related Vaccine Actions are all current or
20 former City employees who are challenging the City's vaccine mandate claiming that the City failed to
21 provide accommodations. If certified, the putative class in the *Guardado* Action would likely include
22 the plaintiff in the *Royce* Action. The *Royce* Action, like *Keene* and the other Related Vaccine Actions
23 concern substantially the same events, as they arise out of challenges to the City's vaccine mandate,
24 including the validity of the policy, both facially and as applied, would necessarily affect the plaintiffs
25 across all actions.

26 It is also "likely that there will be an unduly burdensome duplication of labor and expense or
27 conflicting results if the [*Royce* Action were] conducted before [a] different Judge" than the other

1 Related Vaccine Actions. N.D. Cal. Local Civil Rule 3-12(a)(2). The *Keene* Action and the nine other
2 Related Vaccine Actions, including the *Guardado* Putative Class Action, challenge the same policy
3 and are all pending before the Honorable Jeffrey S. White. Moreover, the *Keene* Action and the
4 Related Vaccine Actions have been consolidated up through summary judgment, and the Court has
5 expressly found that subsequently related cases will be subject to the Limited Consolidation Order.
6 Thus, in the interest of judicial efficiency, and to avoid conflicting decisions, the *Royce* Action too
7 should be heard before Judge White.

8 **CONCLUSION**

9 Because the *Royce* Action is related to *Keene* and the Related Vaccine Actions, the Court
10 should assert its case management authority over the *Royce* Action, find that they are related and
11 reassign the cases to the Honorable Jeffrey S. White. Once related, the *Royce* Action should be
12 consolidated up through summary judgment, including for discovery and all motions, and be subject to
13 the Limited Consolidation Order.

14 Dated:

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20 By: /s/ Lauren E. Wood
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